

**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA  
PHOENIX DIVISION**

IN RE: BARD IVC FILTERS PRODUCTS      CASE No. 2:15-md-2641-DGC

LIABILITY LITIGATION      MDL No.: 2641

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This Document relates to:

Case No. 2:15-cv-1926-DGC

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**MOTION TO AMEND COMPLAINT AND INCORPORATED MEMORANDUM  
IN SUPPORT THEREOF**

**NOW COME** Plaintiffs, DENISE O'NEILL and GERALD O'NEILL,  
individually and as wife and husband, by and through their undersigned attorneys, and  
pursuant to Rule 15 (a)(2) of the Federal Rules of Civil Procedure do file this Amended  
Complaint. A Memorandum in Support is attached hereto.

Dated: March 17, 2016

Respectfully Submitted,

**Lopez McHugh LLP**

By: /s/ Matthew R. Lopez

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**Attorneys for Plaintiff**

## **MEMORANDUM IN SUPPORT OF MOTION TO AMEND COMPLAINT**

### **I. FACTS**

- a. The Plaintiffs filed their Complaint for Damages against the Defendants on July 24, 2015, in the United States District Court for the Southern District of Texas, Corpus Christi Division. See *Exhibit 1*.
- b. The Complaint, as filed, does not accurately reflect a claim on behalf of Plaintiff's husband, Gerald O'Neill for his loss of consortium.
- c. Defendant's counsel has stipulated in writing to allow Plaintiffs to amend their Complaint to include the claim for loss of consortium. See *Exhibit 2*.
- d. The Complaint, as filed, inaccurately identifies Plaintiff Denise O'Neill as Denise O'Neil.

### **II. LAW**

- a. Federal Rules of Civil Procedure Civ. Rule 15 (a)(2) states, in pertinent part:

*"Other Amendments.* In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires."

### **III. DISCUSSION**

This action was previously filed on July 24, 2015 in the United States District Court for the Southern District of Texas, Corpus Christi Division, but failed to include a claim for Plaintiff's spouse, Gerald O'Neill's loss of consortium, in error. The Complaint also referenced Plaintiff Denise O'Neill as Denise O'Neil. Plaintiff's Amended Complaint is filed to correctly allege the claim on behalf of Mr. O'Neill and to correct the spelling of Denise O'Neill's name. Please see: *Plaintiff's Amended Complaint* attached hereto as *Exhibit 3* and incorporated herein by reference.

Pursuant to Local Rule 15.1 please see *Exhibit 4*, wherein Plaintiffs have indicated all changes to the Amended Complaint by underlining additional text and striking through all text to be deleted.

Inadvertently, counsel for Plaintiffs did not include their claim for loss of consortium in the Complaint. Upon discovery of this error, Plaintiffs' counsel contacted Defense counsel and obtained consent to amend the Complaint to properly allege this claim. Defendant's written consent is attached hereto as *Exhibit 2*.

WHEREFORE, Plaintiff requests an Order granting Plaintiffs Leave To File an Amended Complaint, as described herein.

Dated: March 17, 2016

Respectfully Submitted,

**Lopez McHugh LLP**

By: /s/ Matthew R. Lopez

Ramon Lopez

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**Attorneys for Plaintiff**

**CERTIFICATE OF SERVICE**

I hereby certify that, this 17<sup>th</sup> day of March, 2016, I have electronically filed a copy of the above and foregoing with Clerk of the Court using the ECF system, which sent notification of such filing to counsel of record.

/s/Matthew R. Lopez